

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

DAVID WAYNE SCONCE,

Plaintiff(s),

vs.

THOMAS J. KRAG, et al.,

Defendant(s).

Case No. 9:13-cv-0281-KJD-NJK

REPORT AND RECOMMENDATION

Plaintiff David Wayne Sconce is proceeding in this action *pro se*, requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*, and submitted an Amended Complaint (Docket No. 18) on May 12, 2014. This proceeding was referred to the undersigned by Civil Local Rule 72.

On May 29, 2014, the undersigned granted Plaintiff's application to proceed *in forma pauperis*. Docket No. 20. The Court indicated that Plaintiff must pay the initial filing fee and, once that had been done, the Court would then screen his complaint pursuant to 28 U.S.C. § 1915(e)(2). Docket No. 21.

On August 29, 2014, the Court screened Plaintiff's amended complaint. Docket No. 25. The Court found that Plaintiff's claims appeared to be barred by *Heck v. Humphrey*, 512 U.S. 477, 484 (1994), and dismissed them with leave to amend. *See* Docket No. 25 at 3-5.

On December 4, 2014, the Court screened Plaintiff's second amended complaint. Docket No. 29. In that order, the Court found that Plaintiff's claims failed because they (1) were premised on the Interstate Compact for Adult Offender Supervision, which does not create a private right of action, and (2) they were barred by *Heck* in light of the California Court of Appeal decision affirming Plaintiff's conviction and

1 sentence. *Id.* at 3-5. Although it appeared that any further attempt to amend would be futile, the Court
2 nonetheless allowed Plaintiff one final opportunity to submit another amended complaint. *See id.* at 5.

3 Plaintiff was required to file any further amended complaint no later than March 5, 2015. Docket
4 No. 33.¹ The Court expressly warned Plaintiff that the failure to comply with that deadline would result
5 in a recommendation that his claims be dismissed without prejudice. *See* Docket No. 33 at 2; *see also*
6 Docket No. 29 at 6. To date, no further amended complaint has been filed.

7 Accordingly, for the reasons stated in the orders denying Plaintiff's claims with leave to amend,
8 Docket Nos. 25, 29, the undersigned **RECOMMENDS** that Plaintiff's claims be **DISMISSED** without
9 prejudice.

10 **NOTICE**

11 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must be in**
12 **writing and filed with the Clerk of the Court within 14 days of service of this document.** The Supreme
13 Court has held that the courts of appeal may determine that an appeal has been waived due to the failure
14 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This Circuit has also
15 held that (1) failure to file objections within the specified time and (2) failure to properly address and brief
16 the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
17 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
18 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

19 Dated: March 12, 2015

20
21 
22 NANCY J. KOPPE
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28

¹ The Court granted Plaintiff several extensions to the original deadline. *See* Docket Nos. 31, 33.